



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP  
Docket No. 2296-00  
28 August 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 21 August 1997 for four years as an AA (E-2). The record reflects that at the time of your enlistment you had served in the Army from 21 February to 26 March 1996.

The medical record reflects that on 12 September 1997 you were seen at the medical clinic for lower leg pain beginning in the mid-foot and radiating into the lower leg. You reported that the pain interfered with marching, standing and running, and became worse when wearing boots. You had been on limited duty for a week without any improvement. The examining podiatrist noted that you had been discharged from the Army due to fracture of the foot, and that you entered the Navy on a waiver. You were diagnosed with a fracture of the fifth metatarsal of the right foot. The condition existed prior to service and was not correctable to meet Navy standards. An entry level medical separation was recommended.

On 16 September 1997 you were notified that administrative separation was being considered by reason of convenience of the government by reason of defective enlistment and induction due to an erroneous enlistment as evidenced by the diagnosed foot fracture. You were advised of your procedural rights, declined to consult with counsel, and waived those rights. Thereafter, the discharge authority directed an uncharacterized entry level separation. You were so discharged on 22 September 1997 by reason of "Failed Medical/Physical Procurement Standards" and assigned an RE-4 reenlistment code.

Regulations authorized the assignment of an RE-4 reenlistment code to individuals separated by reason of "failed medical/physical procurement standards." The Board specifically noted your statement that you falsely complained of severe foot pain in order to be discharged. You stated that you knew this would work because you did the same thing in order to be released from the Army. The Board is not sympathetic to individuals who obtain discharges through fraudulent means. The Board has no way of determining what your true statement is, the one you are making now, or the statements you made to extricate yourself from your military commitment. It is well established in law that an individual who perpetrates a fraud in order to be discharged should not benefit from the fraud when it is later discovered. Since it appears this was the second time you used this ploy, the Board concluded that the reenlistment code was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director